

HOUSE BILL 227

E1, E2

0lr0710

By: **Delegate James**

Introduced and read first time: January 25, 2010

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Gangs – Definition, Underlying Crimes, and Sentencing**

3 FOR the purpose of altering the definition of “criminal gang” to remove a requirement
4 that a group of three or more persons whose members engage in certain
5 criminal activities, have certain objectives, and have a certain common
6 identifier or purpose must be an ongoing association; adding certain felonies
7 and misdemeanors to the list of underlying crimes that may serve to prove a
8 certain pattern of criminal gang activity for conviction of a defendant as a
9 member of a criminal gang; altering a prohibition against participation in a
10 criminal gang so as to repeal the requirement that a certain pattern of criminal
11 gang activity be ongoing; requiring a sentence imposed for a violation of the
12 prohibition against participation in a criminal gang to be separate from and
13 only consecutive to a sentence for any crime based on the act establishing a
14 violation of the criminal gang law; and generally relating to criminal gangs.

15 BY repealing and reenacting, with amendments,
16 Article – Criminal Law
17 Section 9–801 and 9–804
18 Annotated Code of Maryland
19 (2002 Volume and 2009 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article – Criminal Law**

23 9–801.

24 (a) In this subtitle the following words have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) “Coerce” means to compel or attempt to compel another by threat of harm
2 or other adverse consequences.

3 (c) “Criminal gang” means a group [or ongoing association] of three or more
4 persons whose members:

5 (1) individually or collectively engage in a pattern of criminal gang
6 activity;

7 (2) have as one of their primary objectives or activities the commission
8 of one or more underlying crimes, including acts by juveniles that would be underlying
9 crimes if committed by adults; and

10 (3) have in common an identifying sign, symbol, name, leader, or
11 purpose.

12 (d) “Pattern of criminal gang activity” means the commission of, attempted
13 commission of, conspiracy to commit, or solicitation of two or more underlying crimes
14 or acts by a juvenile that would be an underlying crime if committed by an adult,
15 provided the crimes or acts were not part of the same incident.

16 (e) “Solicit” has the meaning stated in § 11–301 of this article.

17 (f) “Underlying crime” means:

18 (1) a crime of violence as defined under § 14–101 of this article;

19 (2) a felony violation of [§ 3–203,] § 3–701, **§ 3–705, § 3–706**, § 4–503,
20 § 5–602, § 5–603, **§ 5–613, § 5–621, § 5–622, § 5–628**, § 6–103, § 6–109, § 6–202,
21 § 6–203, § 6–204, **§ 6–207**, § 7–104, § 7–105, § 9–302, § 9–303, [or] § 9–305, **§ 10–304,**
22 **§ 11–303, § 11–304, OR § 12–102** of this article; [or]

23 (3) a felony violation of § 5–133 of the Public Safety Article;

24 (4) **A VIOLATION OF § 5–134, § 5–136, OR § 5–141 OF THE PUBLIC**
25 **SAFETY ARTICLE; OR**

26 (5) **A VIOLATION OF § 3–203, § 3–204, § 3–210, § 3–802, § 4–203, §**
27 **4–204, § 6–107, § 6–109, § 6–301, OR § 11–306 OF THIS ARTICLE.**

28 9–804.

29 (a) A person may not:

30 (1) participate in a criminal gang knowing that the members of the
31 gang engage in [an ongoing] A pattern of criminal gang activity; and

1 (2) knowingly and willfully direct or participate in the commission of
2 an underlying crime, or act by a juvenile that would be an underlying crime if
3 committed by an adult, committed for the benefit of, at the direction of, or in
4 association with a criminal gang.

5 (b) A person may not commit a violation of subsection (a) of this section
6 involving the commission of an underlying crime that results in the death of a victim.

7 (c) (1) (i) Except as provided in subparagraph (ii) of this paragraph, a
8 person who violates this section is guilty of a felony and on conviction is subject to
9 imprisonment not exceeding 10 years or a fine not exceeding \$100,000 or both.

10 (ii) A person who violates subsection (b) of this section is guilty
11 of a felony and on conviction is subject to imprisonment not exceeding 20 years or a
12 fine not exceeding \$100,000 or both.

13 (2) A sentence imposed under this section [may] **SHALL** be separate
14 from and consecutive to [or concurrent with] a sentence for any crime based on the act
15 establishing a violation of this section.

16 (d) A person may be charged with a violation of this section only by
17 indictment, criminal information, or petition alleging a delinquent act.

18 (e) (1) The Attorney General, at the request of the State's Attorney for a
19 county in which a violation or an act establishing a violation of this section occurs,
20 may:

21 (i) aid in the investigation of the violation or act; and

22 (ii) prosecute the violation or act.

23 (2) In exercising authority under paragraph (1) of this subsection, the
24 Attorney General has all the powers and duties of a State's Attorney, including the use
25 of the grand jury in the county, to prosecute the violation.

26 (3) Notwithstanding any other provision of law, in circumstances in
27 which violations of this section are alleged to have been committed in more than one
28 county, the respective State's Attorney of each county, or the Attorney General, may
29 join the causes of action in a single complaint with the consent of each State's Attorney
30 having jurisdiction over an offense sought to be joined.

31 (f) Notwithstanding any other provision of law and provided at least one
32 criminal gang activity of a criminal gang allegedly occurred in the county in which a
33 grand jury is sitting, the grand jury may issue subpoenas, summon witnesses, and
34 otherwise conduct an investigation of the alleged criminal gang's activities and
35 offenses in other counties.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2010.